

House Bill 535 (AS PASSED HOUSE AND SENATE)

By: Representative Butler of the 18th

A BILL TO BE ENTITLED
AN ACT

1 To amend an Act providing for the state ombudsman and community ombudsmen for mental
2 health, mental retardation, and substance abuse, approved April 19, 2000 (Ga. L. 2000, p.
3 440), so as to repeal certain provisions providing for state and community officials; to amend
4 an Act providing for the state ombudsman and community ombudsmen for mental health,
5 developmental disabilities, and addictive diseases, approved May 16, 2002 (Ga. L. 2002, p.
6 1324), so as to repeal certain provisions providing for state and community officials; to
7 amend Chapter 2 of Title 37 of the Official Code of Georgia Annotated, relating to the
8 administration of mental health, developmental disabilities, addictive diseases, and other
9 disability services, so as to create the office of disability services ombudsman; to provide for
10 definitions; to provide for the appointment, qualifications, and term of a disability services
11 ombudsman; to provide for a nominating committee for selecting the ombudsman; to provide
12 for the organization of the office of disability services ombudsman; to provide for duties; to
13 provide for the release of certain information to the ombudsman; to provide for penalties; to
14 provide for a medical review group to review the deaths of consumers; to provide for limited
15 liability; to provide for statutory construction; to provide for the appointment, duties, and
16 compensation of the medical review group; to provide for related matters; to provide for
17 contingent effective dates; to repeal conflicting laws; and for other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

19
20 Section 1 of the Act providing for a state ombudsman and community ombudsmen for mental
21 health, mental retardation, and substance abuse, approved April 19, 2000 (Ga. L. 2000, p.
22 440) is repealed in its entirety.

SECTION 2.

Section 1-8 of the Act providing for a state ombudsman and community ombudsmen for mental health, developmental disabilities, and addictive diseases, approved May 16, 2002 (Ga. L. 2002, p. 1324) is repealed in its entirety.

SECTION 3.

Chapter 2 of Title 37 of the Official Code of Georgia Annotated, relating to the administration of mental health, developmental disabilities, addictive diseases, and other disability services, is amended by adding a new Article 2 to read as follows:

"ARTICLE 2**Part 1**

37-2-30.

As used in this article, the term:

(1) 'Advance directive for health care' means a written document voluntarily executed by a patient in accordance with the requirements of Code Section 31-32-5.

(2) 'Clinical record' means a written record pertaining to an individual consumer and shall include all medical records, progress notes, charts, admission and discharge data, and all other information which is recorded by a services provider or other entities responsible for a consumer's care and treatment under this chapter and which pertains to the consumer's hospitalization, treatment, or habilitation.

(3) 'Consumer' means a natural person who has been or is a recipient of disability services as defined in Code Section 37-2-2 and shall include natural persons who are seeking disability services.

(4) 'Durable power of attorney for health care' means a written document voluntarily executed by an individual creating a health care agency in accordance with Chapter 36 of Title 31, as such chapter existed on and before June 30, 2007.

(5) 'Estate representative' means an executor, executrix, administrator, or administratrix of the estate of a deceased consumer.

(6) 'Guardian' shall have the same meaning as provided in Code Section 29-1-1.

(7) 'Health care agent' means an agent under a durable power of attorney for health care or health care agent under an advance directive for health care.

(8) 'Office' means the office of disability services ombudsman created pursuant to subsection (a) of Code Section 37-2-31.

(9) 'Ombudsman' means the disability services ombudsman appointed as provided for in Code Section 37-2-32.

(10) 'Rights' means such rights as provided by statute, rule, or regulation for a consumer of a services provider.

(11) 'Services provider' means a public or private person, corporation, or business which provides disability services operated by the division, under letter of agreement with the division, or under contract with the division.

(12) 'Safety' means freedom from physical harm.

(13) 'Well-being' means quality of life of a consumer, including the environment of care.

37-2-31.

(a) There is created the office of disability services ombudsman. The chief officer of such office shall be the ombudsman.

(b) The office and the ombudsman shall:

(1) Be charged with promoting the safety, well-being, and rights of consumers;

(2) Have the powers and duties set forth in this article; and

(3) Act independently of any state official, department, or agency in the performance of duties.

(c) The office and ombudsman shall be assigned to the office of the Governor for administrative purposes only.

37-2-32.

(a) A nominating committee appointed by the Governor shall identify at least three qualified persons to serve as ombudsman. In making the appointment of the ombudsman, the Governor shall consider, but not be limited to, the nominations furnished by the nominating committee. The ombudsman shall have knowledge and experience concerning the safety, well-being, and rights of consumers and shall have the skills to perform the duties set forth in this article.

(b) The nominating committee shall have at least five members, who are residents of this state, appointed by the Governor and selected from the following:

(1) A former consumer of the division;

(2) A current consumer of the division;

(3) A representative of the department;

(4) A representative of an advocacy organization for consumers;

(5) A representative of law enforcement;

(6) A licensed psychiatrist;

(7) A psychologist;

(8) A registered professional nurse; and

(9) A representative of the executive branch of the state government of Georgia.

(c) Three members of the committee shall constitute a quorum. The nominating committee shall elect from among the members a chairperson and a vice chairperson.

(d) The ombudsman shall serve a term of five years and until his or her successor is appointed and qualified. The ombudsman may be reappointed. No person shall serve as ombudsman while holding another public office or while being an owner or operator of a services provider or in the employ of or under contract with a services provider; nor shall such person be a spouse, parent, or child of such an owner, operator, employee, or contractor.

37-2-33.

(a) The ombudsman may appoint such deputy ombudsmen and staff as may be deemed necessary to effectively fulfill the purposes of this article and establish the compensation thereof, within the limits of the funds available for the purposes of the ombudsman. The duties of the deputy ombudsmen and staff may include the duties and powers of the ombudsman if performed under the direction of the ombudsman. The deputy ombudsmen shall be removable at the discretion of the ombudsman.

(b) The ombudsman shall have the authority to contract with experts in fields including but not limited to medicine, psychology, child development, mental or emotional illness, developmental disability, addictive disease, and child welfare, as needed to support the work of the ombudsman, utilizing funds appropriated for the purposes of the ombudsman.

37-2-34.

The ombudsman and persons employed by or acting as agents of the ombudsman shall be deemed members of the work force of the department solely for the purposes of:

(1) Allowing the department to disclose confidential clinical records and protected health information to the ombudsman as provided for in Code Section 37-2-36;

(2) Protecting confidential clinical records and protected health information from further disclosure through or by the ombudsman and the office of the ombudsman; and

(3) Ensuring the department's compliance with the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, and the Standards for Privacy of Individually Identifiable Health Information promulgated pursuant thereto.

37-2-35.

The ombudsman shall:

(1) Establish priorities, policies and procedures for receiving, investigating, referring, and attempting to resolve complaints made by or on behalf of consumers concerning any act, omission to act, practice, policy, or procedure of a services provider that may

adversely affect the safety, well-being, and rights of consumers and any policies and procedures necessary to implement the provisions of this article;

(2) Investigate and make reports and recommendations to the department and other appropriate agencies concerning any act or failure to act by any services provider with respect to the safety, well-being, and rights of consumers and is authorized to:

(A) Prioritize investigations, reporting, and recommendations based on the seriousness and pervasiveness of the alleged act or failure to act; and

(B) Refer to the services provider those complaints deemed appropriate for resolution by the services provider;

(3) Establish a uniform state-wide complaint process;

(4) Collect and record data relating to complaints and findings with regard to services providers and analyze such data in order to identify adverse effects upon the safety, well-being, and rights of consumers;

(5) Promote the interests of consumers before governmental agencies and seek administrative and other remedies to protect the safety, well-being, and rights of consumers by:

(A) Analyzing, commenting on, and monitoring the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions that pertain to the safety, well-being, and rights of consumers; and

(B) Recommending any changes in such laws, regulations, policies, and actions as the ombudsman determines to be appropriate;

(6) Make a biennial written report documenting the types of complaints and problems reported by consumers and others on their behalf and include recommendations concerning needed policy, regulatory, and legislative changes. The biennial report shall be submitted to the Governor, the General Assembly, the commissioner, and other appropriate agencies and organizations and made available to the public. The ombudsman shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which he or she deems to be most effective and efficient. The report shall not identify any consumer by name or by implication without the express written consent of the consumer, or if applicable the parent of a minor consumer, the guardian of the consumer, or the health care agent of the consumer if the agent is so authorized to make such a decision and the consumer is unable to do so; and

(7) Serve as a member of the medical review group established pursuant to Code Section 37-2-45.

1 37-2-36.

2 (a) The ombudsman on his or her initiative or in response to complaints made by or on
3 behalf of consumers may conduct investigations in matters within his or her powers and
4 duties as provided by this article.

5 (b) The ombudsman shall have the authority to enter any facility, premises, or property
6 where disability services are provided. Upon entering such facility, premises, or property,
7 the ombudsman shall notify the administrator or, in the absence of the administrator, the
8 person in charge of such facility, premises, or property before speaking to any consumer.
9 After notifying the administrator or the person in charge of such facility, premises, or
10 property, the ombudsman may communicate privately and confidentially with consumers
11 in such facility, premises, or property individually or in groups.

12 (c) The ombudsman shall have the authority to inspect the entire facility, premises, or
13 property and have access to the administrative records, policies, and documents of the
14 facility, premises, or property. Entry and investigation as provided by this Code section
15 shall be conducted in a manner which will not significantly disrupt the provision of
16 disability services to consumers.

17 (d) The ombudsman shall have access to the clinical records of any consumer if:

18 (1) The ombudsman has written consent of the consumer, or if applicable the parent of
19 a minor consumer, the guardian of the consumer, or the health care agent of the consumer
20 if the agent is authorized to make such a decision and the consumer is unable to do so;
21 or

22 (2) The consumer lacks the capacity to consent to the review and has no guardian of the
23 consumer or health care agent who is authorized to make such a decision.

24 (e) The ombudsman shall identify himself or herself as such to the consumer, and the
25 consumer shall have the right to communicate or refuse to communicate with the
26 ombudsman.

27 (f) The consumer, the parent of a minor consumer, the consumer's guardian, or the health
28 care agent of the consumer if the health care agent is authorized to make such a decision
29 and the consumer is unable to do so, shall have the right to participate in planning any
30 course of action to be taken on the consumer's behalf by the ombudsman, and the
31 consumer, parent of a minor consumer, guardian, or health care agent of the consumer if
32 the agent is so authorized, shall have the right to approve or disapprove any proposed
33 action to be taken on the consumer's behalf by the ombudsman.

34 (g) The ombudsman shall have the authority to obtain from any department, governmental
35 agency, or services provider, and such department, agency, or services provider shall
36 provide cooperation and assistance, services, data, and access to, such files and records as

will enable the ombudsman properly to perform his or her duties and exercise his or her powers, provided that such information is not privileged under any law.

(h) The ombudsman shall report for investigative purposes any and all:

(1) Suspected criminal activity to the appropriate law enforcement agency;

(2) Suspected abuse, neglect, exploitation, or abandonment of a consumer by any person to the appropriate federal or state regulatory authority; and

(3) Suspected violations of any professional code of conduct to the appropriate licensing board.

(i) The ombudsman shall provide information and procedural guidance to any person who requests assistance in making a report of suspected abuse, neglect, exploitation, or abandonment of a consumer by any person:

(1) To the appropriate law enforcement agency if criminal activity is suspected; or

(2) To the appropriate federal or state regulatory authority if abuse, neglect, exploitation, or abandonment of a consumer is suspected.

37-2-37.

(a) Following an investigation, the ombudsman shall report his or her opinions or recommendations to the following, as applicable: the consumer, parent of a minor consumer, guardian of the consumer, health care agent of the consumer, estate representative, services provider, and the division and shall attempt to resolve the complaint using, whenever possible, informal techniques of mediation and conciliation. With respect to a complaint against the services provider, the ombudsman shall first notify the administrator or person in charge of that services provider in writing and give such person a reasonable opportunity to correct any alleged defect. If so notified and the administrator or person in charge fails to take corrective action after a reasonable amount of time or if the defect seriously threatens the safety or well-being of any consumer, the ombudsman may refer the complaint to the division and any other appropriate agency.

(b) Complaints or conditions adversely affecting consumers which cannot be resolved in the manner described in subsection (a) of this Code section shall, whenever possible, be referred by the ombudsman to the division and any other appropriate agency.

37-2-38.

(a) The identity of any complainant or individual providing information on behalf of the consumer or complainant relevant to the investigation of a complaint shall be confidential and shall not be disclosed without the express written permission of such person, unless such disclosure is necessary for the department or services provider to protect the safety, well-being, or rights of a consumer; provided, however, that if the complaint becomes the

1 subject of a judicial or administrative proceeding, the identity of such persons may be
2 disclosed for the purpose of the proceeding.

3 (b) The identity of any and all consumers involved in or mentioned in an investigation,
4 whether as a complainant or otherwise, shall be confidential and shall not be disclosed
5 without the express written consent of the consumer or a person legally authorized to
6 consent for the consumer.

7 37-2-39.

8 The ombudsman shall prepare and distribute to each services provider in the state a written
9 notice describing the procedure to follow in making a complaint, including the address and
10 telephone number of the office and the ombudsman. The administrator or person in charge
11 of such services provider shall give the written notice required by this Code section to each
12 consumer who receives disability services from such services provider and the consumer's
13 guardian, parent of a minor consumer, or health care agent, if any, upon first providing
14 such disability services. The administrator or person in charge of such services provider
15 shall also post such written notice in conspicuous public places in the facility, premises, or
16 property in which disability services are provided in accordance with procedures provided
17 by the ombudsman and shall give such notice to any consumer and his or her guardian,
18 parent of a minor consumer, or health care agent, if any, who did not receive it upon the
19 consumer's first receiving disability services.

20 37-2-40.

21 (a) No person shall discriminate or retaliate in any manner against any consumer, relative
22 of a consumer, guardian or health care agent of a consumer, any employee of a services
23 provider, or any other person for making a complaint or providing information in good
24 faith to the ombudsman.

25 (b) Any person violating this Code section shall be guilty of a misdemeanor.

26 37-2-41.

27 The ombudsman and commissioner shall obtain federal financial participation for eligible
28 activity by the ombudsman. The ombudsman shall maintain and transmit to the department
29 documentation that is necessary in order to obtain federal funds which shall be applied to
30 the budget of the ombudsman.

1 37-2-42.

2 No person providing information, including but not limited to a consumer's records, to the
3 ombudsman shall be held, by reason of having provided such information, to have violated
4 any criminal law or to be civilly liable under any law unless such information is false and
5 the person providing such information knew or had reason to believe that it was false.

6 37-2-43.

7 (a) Any person who makes a complaint or provides information relating to a complaint as
8 authorized in this article shall incur no civil or criminal liability therefor unless such
9 complaint or information is false and the person making such complaint or providing such
10 information knew or had reason to believe that it was false.

11 (b) The ombudsman and employees of the office of ombudsman shall be held harmless,
12 including legal fees and costs, if any, in any claim, demand, or suit for damages resulting
13 from acts or omissions committed in the discharge of his or her duties for any action taken
14 under this article if the action was taken in good faith, was within the scope of the
15 ombudsman's authority, and did not constitute willful or reckless misconduct.

16 37-2-44.

17 Nothing in this article shall be construed to limit the power of the department to investigate
18 complaints where otherwise authorized by law.

19 37-2-45.

20 (a) The Governor shall appoint a medical review group to conduct medical reviews of all
21 deaths of consumers in state hospitals or state operated community residential services,
22 which shall serve at the pleasure of the Governor. The medical review group shall consist
23 of the ombudsman and four board certified physicians, one of whom shall be a psychiatrist.
24 Three members of the medical review group shall constitute a quorum. The ombudsman
25 shall serve as the chairperson and shall appoint a vice chairperson.

26 (b) The physician members of the medical review group shall receive such compensation,
27 if any, as may be fixed by the Governor. Such physician members shall be reimbursed for
28 expenses incurred by them in performance of their duties such as transportation, lodging,
29 and subsistence, at the same rate as members of the General Assembly.

30 (c) The medical review group:

31 (1) Shall be a review organization and shall conduct reviews of deaths of consumers in
32 state hospitals and state operated community residential services as peer reviews pursuant
33 to Article 6 of Chapter 7 of Title 31;

34 (2) Shall review, within 60 days of notice of the death, all deaths of consumers:

(A) Occurring on site of a state hospital or state operated community residential services providing services under this title;

(B) In the company of staff of a state hospital or state operated community residential services providing services under this title; or

(C) Occurring within two weeks following the consumer's discharge from a state hospital or state operated community residential services;

(3) Shall have access to all clinical records of the consumer, all investigations conducted by the department, state hospitals, or state operated community residential services regarding the death, and all reviews of the death, including peer reviews;

(4) May interview staff of the state hospitals and state operated community residential services, and other persons involved in the events immediately preceding and involving the death;

(5) Shall determine whether the death was the result of natural causes or may have resulted from other than natural causes;

(6) Shall determine whether the death requires further investigation or review;

(7) May make confidential recommendations to the ombudsman, the department, the division, the state hospitals, and state operated community residential services regarding consumer treatment and care, policies, and procedures, which may assist in the prevention of deaths; and

(8) Shall report to the appropriate law enforcement agency any suspected criminal activity or suspected abuse and shall report any suspected violation of any professional code of conduct to the appropriate licensing board.

(d) All peer review records submitted to or produced or created by the medical review group and the findings and recommendations of the medical review group, except for the quarterly reports, shall remain confidential and shall not be considered public records under Article 4 of Chapter 18 of Title 50.

37-2-46.

(a) Within 24 hours after a consumer suffers death, the division, governmental agency, or services provider shall notify the ombudsman of such death; provided, however, that for a death occurring within two weeks following the consumer's discharge from a state hospital or state operated community residential services, the division, governmental agency, or services provider shall notify the ombudsman of such death within 24 hours of knowledge of such death.

(b) The medical reviews of deaths in state hospitals and state operated community residential services as provided for in Code Section 37-2-45 shall not be limited by the type of disability services received or applied for by the consumer at any time after the effective

1 date of this part and such reviews shall be of the death of all consumers, the provisions of
2 Code Section 37-2-47 notwithstanding.

3 37-2-47.

4 Commencing with the calendar month immediately following the month in which this part
5 becomes effective, for the purposes of this article, the office and the ombudsman shall
6 receive, investigate, refer, and attempt to resolve complaints made by or on behalf of only
7 those consumers with mental or emotional illness, consumers with mental or emotional
8 illness and co-occurring developmental disability, and consumers with mental or emotional
9 illness and co-occurring addictive disease.

10 Part 2

11 37-2-50.

12 Commencing with the calendar month immediately following the month in which this part
13 becomes effective, for the purposes of this article, the office and ombudsman shall, in
14 addition to those powers and duties provided by Code Section 37-2-47, receive, investigate,
15 refer, and attempt to resolve complaints made by or on behalf of all consumers with
16 developmental disability or addictive disease."

17 **SECTION 4.**

18 This Act shall become effective on July 1, 2008, except that:

19 (1) Part 1 of Article 2 of Chapter 2 of Title 37 as enacted by this Act shall become
20 effective only if funds are specifically appropriated for the purposes of said part in a
21 General Appropriations Act making specific reference to said part and shall become
22 effective when funds so appropriated become available for expenditure; and

23 (2) Part 2 of Article 2 of Chapter 2 of Title 37 as enacted by this Act shall become
24 effective only if funds are specifically appropriated for the purposes of said part in a
25 General Appropriations Act making specific reference to said part and shall become
26 effective when funds so appropriated become available for expenditure.

27 **SECTION 5.**

28 All laws and parts of laws in conflict with this Act are repealed.